In The

Supreme Court of the United States

October Term, 1939.

No.

COMMERCIAL CASUALTY INSURANCE COMPANY,
a Foreign Corporation,
Petitioner and Appellant Below,

v.

MARJORIE W. STINSON,
Respondent and Appellee Below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of Courts Below.

The opinion in the United States Circuit Court of Appeals for the Sixth Circuit is pages 120-129 of the record and is reported in *111 Fed. (2nd) 63.*

II.

Jurisdiction.

1. The date of the judgment to be reviewed is the 10th day of April, 1940 (119).

2. The statutory provision which is believed to sustain the jurisdiction of this court is Section 347, Title 28 of United States Code Annotated, also known as Section 240, Judicial Code.

3. The cause of action arose in the State of Michigan. The ruling of the United States Circuit Court of Appeals for the Sixth Circuit is a decision of an important question of Michigan law, and is in conflict with the applicable local decisions.

Budzinski v. Metropolitan Life Insurance Company, 287 Mich. 495; rehearing 504.

III.

Statement of Case.

This has already been stated in the preceding petition, which is hereby adopted and made a part of this brief.

IV.

Specifications of Error.

The United States Circuit Court of Appeals for the Sixth Circuit erred in holding that even though the weight of the evidence shows that both excessive use of alcohol and a fall were concurring causes of the death of the assured, it was for the jury to say which was the efficient, dominant proximate cause (127).

V.

ARGUMENT.

There being no question but what alcoholism contributed to the assured's death, there was no substantial evidential basis for affirming the finding that the death "resulted directly and independently of all other causes, from accidental bodily injuries." The "proximate cause of death" rule, adopted by Judge Hamilton in the prevailing opinion in the United States Circuit Court of Appeals is not in harmony with the present rule adopted by the Supreme Court of the State of Michigan.

The Michigan decisions relied upon by the United States Circuit Court of Appeals have been effectively overruled by the Michigan Supreme Court, in the recent decision of *Budzinski v. Metropolitan Life Insurance Company, 287 Mich. 504.*

The "Efficient, dominant, proximate cause" rule, as applied in suits on accident insurance policies was adopted by the Supreme Court of the State of Michigan, in the case of *Abbott v. Travelers Insurance Company, 208 Mich. 654,* by an evenly divided court, and was the law of that case only. It apparently was subsequently affirmed by the case of *Kansas v. New York Life Insurance Company, 223 Mich. 238,* referred to by Judge Hamilton in his opinion. These cases, however, were effectively overruled by the prevailing opinion of the Michigan Supreme Court on rehearing of the recent case of *Budzinski v. Metropolitan Life Insurance Company, 287 Mich. 504,* which is now the law of the state of Michigan,

and with which the opinion of the United States Circuit Court of Appeals in the instant case is now in conflict. The United States Circuit Court of Appeals should have followed the majority opinion of the Budzinski decision in accordance with the decision of *Erie Railroad Company v. Tompkins, 302 U. S. 671.*

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

ROBERT E. PLUNKETT,
Counsel for Petitioner.